

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0944/P1dn
RCT:kjf:jf

December 17, 2008

John Anderson:

This is a preliminary draft of the proposal concerning the recycling of electronic devices. The draft is based on Senate Substitute Amendment 1 to 2007 Senate Bill 397 with numerous changes, primarily based on instructions from DNR. I have also made some changes intended to improve consistency and clarity. The draft should be reviewed carefully.

Some of the most extensive changes from last session relate to requirements imposed on registered recyclers (those that recycle covered electronic devices on behalf of manufacturers). Earlier, there had been a request to require registered recyclers to certify that they took certain actions, some of which were not explicitly required under current law or under last year's legislation. I made the point that actions should be required before a person is asked to certify compliance. I have tried to include language that requires registered recyclers to take the actions that are not already required of them (called operational requirements, see proposed s. 287.17 (8) (c)) and then requires recyclers to certify that they comply with those new requirements as well as with some requirements that apply to them under current law (see proposed s. 287.17 (8) (d)).

In the course of drafting, I realized that I am uncertain about exactly what requirements do apply to recyclers under current law. One matter that confuses me relates to point 20 of the DNR instructions, which requires recyclers to take three kinds of actions to safeguard occupational health and safety. The instructions indicate that the first kind of action, training personnel, is required under current law and that the other two kinds of actions are not required under current law. However, the instructions refer to current law as the source of requirements for all three kinds of activities. I am also not certain whether there is an intent to apply the requirements that are included under point 19 more broadly than they currently apply. It is unclear to me to what extent the intent is to require all registered recyclers to comply with requirements that currently apply to some persons but that do not currently apply to all recyclers who will have to become registered.

In regard to using cross-references to extend the application of current rules and regulations, it is often difficult to apply requirements that are written to apply to one kind of entity or in one situation to another kind of entity or another situation. One aspect of this problem is that the terms of the existing requirement may simply be

inapplicable to the new entities or situations. It seems to me that this might be the case with the state requirements for contingency plans referred to in the “Explanation/Intent” column for point 20. (I am also confused by the reference to ch. NR 665 rather than ch. NR 664.)

Also relating to point 20, I have done some research concerning the Emergency Planning and Community Right-to-Know Act (EPCRA) and have not found requirements for a covered business to have a plan for identification and management of hazardous materials. Therefore, the draft does not include a reference to EPCRA. I will look into this matter further.

As requested, this draft authorizes DNR to exclude a type of electronic device from the landfill ban, from the definition of covered electronic device, or from both. I am not sure what the standard should be for making an exclusion. See proposed s. 287.17 (10) (i).

Please contact me with any questions or redraft instructions.

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